

MINUTES
Planning Commission
February 3, 2020

The Wyoming Planning Commission met in regular session on February 3, 2020 in the Council Chambers at the City Building. The meeting was called to order at 7:00 p.m. by Mr. Jon B. Boss, Chairman. Attendance was as follows:

MEMBERS:

Jon B. Boss
Phyllis Bossin
Al Delgado
Dan Johnson

STAFF:

Megan Statt Blake, Community Development Director
Tana B. Pyles, Community Development Specialist

OTHERS:

Emily Supinger, City Solicitor

Welcome New City Council Representative

Al Delgado was warmly welcomed back to the Planning Commission as the City Council representative, having served many years ago as its Chairman.

Approval of the November 4, 2019 Meeting Minutes

Mr. Johnson moved to approve the minutes as written. Ms. Bossin seconded the motion. There being no comments, the motion to approve the November 4, 2019 meeting minutes carried with all voting yes.

Citizen Participation

No citizens were present.

Business

Review of Draft Ordinance Amending Chapter 1157 of the Zoning Code Pertaining to the Reduced Density Residential Overlay District: Ms. Statt Blake introduced Ms. Supinger and provided a brief explanation of her presentation.

Ms. Supinger reviewed the draft changes she is recommending to Chapter 1157 of the Zoning Code which directs the formation and management of the Reduced Density Residential Overlay District. The Overlay is a mechanism intended to allow owners to protect their property from future subdivision and other development changes that would

otherwise comply with zoning regulations. To date, only one property in Wyoming has adopted a Reduced Density Overlay, 333 Oliver Road, known locally as the Stearns Property.

Ms. Supinger is recommending amendments to this Chapter that will change the approving authority from an Administrative (City Manager) level to a Legislative (City Council) level to align with how other zoning changes are handled.

Ms. Supinger explained that the current owner of 333 Oliver Road, Ms. Landers, believes the Overlay should not apply because it was approved by the City Manager and not by City Council. The proposed changes to the legislation would still adhere to the spirit and intent of the Overlay District, but would allow a property owner some flexibility to make minor modifications to the density or use of a property.

Ms. Landers has approached the City numerous times requesting to subdivide the property into three separate parcels; one parcel maintaining the majority of the existing estate, one parcel containing the existing carriage house, and a parcel on the west for development. Additionally, Ms. Landers has proposed, in the past, to use the estate as a bed and breakfast establishment under some future ownership.

The intent is to maintain the Reduced Density Overlay designation on the property, to keep it from being razed, destroyed, or divided into several lots.

Ms. Bossin commented that in all her years on the Commission, she cannot recall any instance where staff (or the Administration) had not provided sufficient guidance with such matters and she cannot understand how the prior approval is insufficient. Ms. Supinger commented that there is a legal argument that the Overlay designation should have legislative approval.

Ms. Bossin asked if the Planning Commission's minutes were reviewed to determine the path the Commission took to create the Overlay District and the discussion around the topic. Ms. Supinger stated that the zoning file for the subject property was reviewed. Ms. Bossin added that the Planning Commission spent a significant amount of time discussing how to prohibit the property to ever be subdivided and developed, which was at the request of the prior owner, Ms. Margot Stearns.

Ms. Statt Blake commented that the way the legislation was written resulting in approval by the City Manager is not common practice. Ms. Bossin stated that the City should not honor Ms. Landers' request to subdivide the property, she believes the spirit and intent of the Overlay District is very clear.

Mr. Boss asked if a bed and breakfast operation would be permitted. Ms. Supinger stated that the property, as restricted by the Overlay, is required to maintain a single-family residential status, and thus a bed and breakfast is not permissible.

Mr. Delgado commented that it is his understanding that if the Overlay District were not administratively approved by the City Manager, the request would have been brought to City Council for their consideration. The process that occurred and created the perceived issue, speculatively could be challenged in court. Ms. Supinger stated that the only issue to decide tonight is whether the Planning Commission should make changes to the Zoning Code to amend a possible deficiency in its language.

Mr. Boss commented that the original intent of the Code was to protect the property from being subdivided and developed. The Planning Commission could recommend an amendment to the Code to make the language more consistent with how other zoning changes are approved. City Council could determine that the request to further subdivide the property is in the spirit and intent of the original Zoning Code without revision. Ms. Supinger commented that the City has not received an application to subdivide the property.

Ms. Bossin questioned if in any case the proposed new language would void the current Overlay designation. Ms. Bossin stated that there is a deficiency in the language of the current Code in how the request was processed initially, which is the issue at hand.

Mr. Boss questioned if there are any other Codes with this similar deficiency. Ms. Statt Blake stated that she and Ms. Pyles have been reviewing the Zoning Code in depth to determine this as well, and have not found similar examples. Ms. Supinger added that this is a unique chapter of the Code because it was crafted specifically for the request of Ms. Stearns that the property never be subdivided and/or developed.

Mr. Johnson stated that he was not on the Planning Commission when the Overlay District was created and he asked if there was a restriction of any kind placed on the deed. Ms. Supinger stated that the restrictions appear on the Deed of Acceptance, which accepted the zoning designation, however it does not appear the restrictions were placed on the primary deed for the property. Mr. Johnson commented that if Ms. Stearns requested that the Overlay zoning be created to prevent subdivision and/or development that the purchaser, Ms. Landers, would have known about the Overlay District at the time she purchased the property. Ms. Supinger agreed and added that Ms. Landers has employed other attorneys over the years since she has owned the property and her current attorney is the first to question the approval process.

Mr. Johnson commented that if the City is confident that it did the right thing and chooses to change the Code, it is the City's prerogative. He asked if there would be any reason to

give pause to that path. Ms. Supinger stated that she brought the issue to City Council's attention primarily because of the letters she received from Ms. Landers' current attorney, and City Council has determined this is the best path.

Mr. Boss commented that he looks at this as the City's ongoing review of its Planning & Zoning Code and sees that it is appropriate to make the changes proposed by the Solicitor at this time. Because the Commission regularly and frequently reviews and adjusts the Code when necessary, he does not see anything out of place with the proposed revisions to this particular Code. Mr. Johnson added that any time a deficiency in the Zoning Code is found it should be changed or corrected immediately.

Ms. Bossin questioned that if the Planning Commission, and subsequently City Council, adopts the recommended changes to the Zoning Code, it does not solve the issue brought about by Ms. Landers' attorney. Mr. Boss commented that revising the Code simply completes one aspect of a deficiency but does not change the situation.

Ms. Supinger commented that if an application for subdivision and/or development is received from Ms. Landers the City would confirm the zoning of the property and apply the Zoning Code to restrict that it not be subdivided and/or developed. If the Reduced Density Overlay District is found to not apply, the City could, speculatively, end up with the property divided into several lots.

Mr. Johnson stated that he read the proposed changes to the Zoning Code not for its content but rather for the background and asked whether the Code requires the property owner to file an application for development. Ms. Supinger stated that it does, and so long as the revisions are consistent with the original intent of the Overlay District in the first place, the Code could be applied.

Ms. Supinger explained that the intent of the Reduced Density Overlay is to preserve the Stearns estate and prevent something from happening to it, such as subdivision and/or development, which would diminish the integrity of the estate and the historic setting of the home.

Mr. Johnson commented that he believes the Code should be revised with the new Code language. The owner has to make a request to do anything to the property and since it is speculated that the process for creating a Reduced Density Overlay is inconsistent with the balance of the Code, the City should take the steps to update it now.

Ms. Bossin requested the minutes from the original approval of the Overlay District.

Ms. Bossin asked if there has been research done on the statute of limitations. Ms. Supinger stated that she has conducted research and has not found anything definitive and

added that there is no recognition that the City did anything wrong, we are simply changing how the process of approval is handled.

Ms. Supinger reviewed each of the proposed changes to the Code and having received no further question or comments, Mr. Johnson moved to approve the recommended changes as written. Ms. Bossin seconded the motion. By roll call vote, 4-0, all voted yes.

Miscellaneous

Wyoming City Schools Athletic Training Facility Update: Ms. Statt Blake reported that the Development Plan was approved by the Planning Commission in November and by City Council in December. The developer is finalizing the permit drawings and ground breaking is anticipated within the next two months.

Housing Infill RFP Update: Ms. Statt Blake explained that this is an item that was not under the purview of the Planning Commission but alighted with the Master Plan. Construction on the first home, which will be on Crescent Avenue, will likely begin in the summer by the chosen developer, Homewood Development.

432 Springfield Pike RFP Update: Ms. Statt Blake reported that the Planning Commission recommended the rezoning of this property and City Council approved the recommendation. Members may recall that in prior conversations the acquisition of the property would allow better parking and circulation to the businesses on the corner of Springfield Pike and Wyoming Avenue. The property at 432 Springfield Pike is a key part of the Promenade, and has been a part of the Master Plan for many years. The engineer's estimate on the parking lot project came in somewhat higher than the budget allows at this time. It is anticipated that this project may not be funded until 2021 at best.

Items of Interest for the Promote Wyoming Commission: Ms. Statt Blake commented that the Promote Wyoming Commission has done a good job of telling stories from a City perspective. If there is anything that the Planning Commission is interested in sharing through the Promote Wyoming Commission, please let her know and she will pass it along.

Mr. Boss asked if there has been any progress from the Board of Education on a proposed addition High School Media Center. Ms. Statt Blake commented that a second meeting will be held this week to review the City's Development Plan process. The school has received a substantial donation from a private individual, and will be moving forward with the project. The size of the addition is not substantial and may be able to be approved Administratively and if not, the Planning Commission will receive the Development Plan application for a full review process.

Excusal of Absent Members

Ms. Bossin moved to excuse Mr. Pagliaro. Mr. Delgado seconded the motion. By roll call vote, all voted yes, the motion to excuse Mr. Pagliaro carried.

Adjourn

There being no further business to discuss, Ms. Bossin moved to adjourn the meeting. Mr. Delgado seconded the motion. All voted yes, the motion carried. The meeting adjourned at 7:45 p.m.

Respectfully submitted,

Debby Martin, Executive Assistant

Jon B. Boss, Chairman